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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,078	02/03/2004	Toshifumi Masaki	1232-5273	4536

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MORGAN & FINNEGAN, L.L.P.
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NEW YORK, NY 10281-2101

EXAMINER

STULTZ, JESSICA T

ART UNIT	PAPER NUMBER
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2873

NOTIFICATION DATE	DELIVERY MODE
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01/31/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com
Shopkins@Morganfinnegan.com
jmedina@Morganfinnegan.com

Office Action Summary

Application No.

10/772,078

Applicant(s)

MASAKI, TOSHIFUMI

Examiner

Jessica T. Stultz

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 8, 9 and 14 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims 4-5 and 8-9 drawn to an invention nonelected with traverse in the reply filed on May 8, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujieda US 5,889,576, herein referred to as Fujieda '576.

Regarding claim 1, Fujieda '576 discloses an ophthalmologic apparatus (Abstract) comprising: an eye examining portion unit for receiving a light beam and effecting the measurement of the eye to be examined (Column 6, line 55-Column 7, line 41, wherein a light beam from light sources "11" reaches the fundus of the eye as shown in Figures 2 and 4-5); an image pickup element for picking up the image of the front eye part of the eye to be examined (Column 6, line 55-Column 7, line 41, wherein the image pickup element comprises image forming lens "26", as shown in Figures 2 and 4-5); and a controller for comparing pupil diameter of the eye to be examined with a predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein the pupil diameter is detected and compared to a

rectangular area "110", Figures 4-7), for detecting the positional shift between a position of the vertex of the cornea and the eye examining portion unit in a case where the pupil diameter of the eye to be examined is larger than the predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, specifically Column 5, lines 58-61 and Column 6, lines 44-46, wherein when the pupil diameter is greater than the area "110", a shift between the corneal vertex "101" and the eye examining portion is determined, Figures 4-5), for detecting the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the pupil diameter of said eye to be examined is smaller than the predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, specifically, Column 6, lines 47-54, wherein when the pupil diameter is smaller than the area "110", a shift between the pupil center "111" and the eye examining portion is determined, Figures 4-5), and for aligning the eye examining portion unit based on the detected positional shift (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, wherein the eye examining portion is aligned based on the positional shift).

Regarding claim 14, Fujieda '576 further discloses that the controller determines the pupil diameter of the eye to be examined on the basis of an edge of the pupil in a horizontal direction and an edge of an iris in the horizontal direction (Column 4, line 54-Column 6, line 54, wherein the pupil diameter is determined to be larger or smaller than area "110" using an edge of the pupil that meets an edge of the iris in the horizontal direction, as shown in Figures 4-5).

Response to Arguments

Applicant's arguments filed November 2, 2007 have been fully considered but they are not persuasive. Specifically, applicant argues that the Fujieda et al '172 reference does not

disclose using different alignment methods in accordance with the size of the pupil diameter. However, the examiner disagrees since Fujieda et al '172 discloses an apparatus that detects the positional shift in different manners based on whether the pupil diameter is larger or smaller than area "110" (Column 5, lines 58-61 and Column 6, lines 44-54). Specifically, Fujieda et al '172 discloses an apparatus that detects the positional shift between a position of the vertex of the cornea and the eye examining portion unit in a case where the pupil diameter of the eye to be examined is larger than the predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, specifically Column 5, lines 58-61 and Column 6, lines 44-46, wherein when the pupil diameter is greater than the area "110", a shift between the corneal vertex "101" and the eye examining portion is determined, Figures 4-5) and wherein the apparatus detects the positional shift between the center of the pupil of the eye to be examined and the eye examining portion unit in a case where the pupil diameter of said eye to be examined is smaller than the predetermined value (Column 5, line 43-Column 6, line 54 and Column 7, line 49-Column 8, line 45, specifically, Column 6, lines 47-54, wherein when the pupil diameter is smaller than the area "110", a shift between the pupil center "111" and the eye examining portion is determined, Figures 4-5).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

Application/Control Number:
10/772,078
Art Unit: 2873

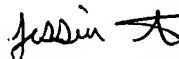
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica T. Stultz whose telephone number is (571) 272-2339. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jessica T Stultz
Primary Examiner
Art Unit 2873
January 24, 2008